

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2010-004253

04/29/2011

HONORABLE THOMAS L. LECLAIRE

CLERK OF THE COURT

D. Benitez

Deputy

IN RE THE MATTER OF
WILLIAM BRYAN WILKERSON

DAVID LEE GOLDFARB

AND

AMY J LEWIS

AMY J LEWIS
1111 N MISSION PARK BLVD # 104
CHANDLER AZ 85224
SHANNON BRADLEY

FAMILY COURT SERVICES-CCC

RULING

This matter comes before the Court following a trial on custody, parenting time, and child support. The Court has considered the evidence presented at the hearing, the pleadings filed by the parties, the Court's file, the arguments of counsel, and the applicable law.

On October 12, 2010, the Court issued a minute entry order regarding paternity. That order is affirmed in its entirety, except where modified by this order.

CUSTODY

From the evidence presented and after considering the applicable law,

The Court makes the following findings under A.R.S. § 25-403(A):

1. *The wishes of the children's parent or parents as to custody.* Father requests that the Court award joint custody to the parties. Father expresses concerns about Mother's ability to parent, given her withholding of parenting time of the minor child from Father. Mother seeks

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sole custody of the minor child, and in the alternative seeks joint custody with Mother having final decision-making authority.

2. *The wishes of child as to the custodian.* The child is under age 1. This factor is inapplicable.

3. *The interaction of interrelationship of child with the child's parent's, the children's siblings and any other person who may significantly affect the children's best interest.* The information provided to the Court suggests that both parents have provided a nurturing and appropriate interrelationship with the minor child. Mother has had more time with the minor child, but this results from Mother's active role to deny parenting time from Father. As a result, the Court is unwilling to weigh this factor in favor of Mother and against Father, since it is Mother's actions that have denied Father parenting time with the minor child. There is no other information to suggest that the relationship of all the extended family to the minor child on both sides is anything but appropriate and nurturing.

4. *The child's adjustment to home, school, and community.* The child is under 1 year of age. This factor is inapplicable.

5. *The mental and physical health of all individuals involved.* Both parties have accused the other of having some mental health issues. The Court has not found any significant and credible evidence that either party suffers from a mental disease or defect which would affect the parenting of the minor child. Instead, the issues that have arisen appear to be calculative and deliberate and reflective of the animosity of the parties, rather than the result of some mental limitation. The Court is unaware of any health issues which are relevant to this consideration.

6. *Which parent is more willing to allow frequent, meaningful and continuing contact with other parent?* The Court believes that Father would allow the child frequent and meaningful contact with Mother. The Court is equally convinced that Mother would limit, if allowed to limit, Father's frequent and meaningful and continuing contact with the minor child. Mother has taken actions which already suggest to the Court that she will use a variety of means to limit Father's parenting time. For example, Mother claims that the baby is most happy when he's with Father. This statement is absurd. The child is less than 1 year of age, and the time period during which these conclusions could be drawn is at a time where the child was even younger. The child has no ability to communicate his feelings about Father to Mother. This is Mother's mere conjecture. It is unsubstantiated. Mother also made statements to the paternal grandmother when the child was born, in which she allowed grandmother to visit with the minor child, but would not let Father see the minor child. It appears that Mother had obtained an Order of Protection which prevented Father from seeing the minor child while she was in proximity to

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the minor child. Mother purportedly stated that, "Brian is never going to see the baby." She purportedly also told paternal grandmother that, "Brian should get a lawyer." Mother claims that the basis for the Order of Protection is that Father sent text messages that were hostile and harassing and threatening, and that she felt threatened by them. Based on all the evidence which the Court has reviewed, the Court believes that Mother used the Order of Protection process to deny Father parenting time.¹ Additionally, Mother indicated that the reason no agreement was reached on parenting time was because the Court had set a temporary orders hearing. The Court does not find that rationale compelling or providing any basis for denying parenting time.

7. *Whether one parent, both parents, or neither parent has provided primary care of the child.* This factor is related to an earlier factor, which is affected by the determination by this Court that Mother has withheld parenting time from Father. As a result, Mother has been the primary caretaker of the minor child. The Court will not credit Mother with that role, based on her actions prior to the Court issuing an order on parenting time.

8. *The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.* The Court believes that some degree of coercion and duress has been exerted by Mother, as has been previously described. The Court incorporates these facts here. Although the parties did not reach an agreement, as a result of those activities, the fact remains that Mother was calculative in attempting to prevent Father from obtaining parenting time, or at the least, significantly the onset of parenting time for Father.

9. *Whether a parent has complied with chapter 3, article 5 of this title.* Father and Mother have attended the required classes.

10. *Whether either parent was convicted of an act of false reporting of child abuse or neglect under Section 13-2907.02.* Neither parent has been convicted on act of false reporting.

The Court further analyzed this case under A.R.S. § 25-403.01. The Court considered the following factors:

1. *The agreement or lack of agreement of the parents regarding joint custody.* Father seeks joint of the minor child. Mother seeks sole custody of the minor child. THE COURT FINDS that Mother has not placed the best interests of the minor child first in

¹ Relevant in this inquiry is the Court's notation that Mother raised the issue of paternity. Mother testified that the parties were in a relationship starting October 2009 and engaged by December 2009. Based on the birth date of the child, the child was conceived in November 2009. Under the circumstances of this case, there are only two explanations for Mother's request for a paternity test, both of which negatively impact Mother: (1) Mother was deceiving Father about the relationship; or (2) Mother, as suggested by Father, invoked paternity testing to deny Father parenting time.

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determining whether joint custody was appropriate. The issues that Mother has raised regarding Father's parenting skills largely result from her animosity towards Father, and not truly resulting from her concerns about his parenting skill.

2. *Whether a parent's lack of agreement is unreasonable or is influenced by an issued not related to the best interests of the child.* As indicated, THE COURT FINDS that Mother's lack of agreement to joint custody is largely unreasonable and is influenced by animosity and does not result from the best interests of the minor child. Mother's activities in this matter show a pattern of placing roadblocks in the way of Father's parenting.

3. *The past, present, and future abilities of the parties to cooperate in decision making about the child to the extent required by the order of joint custody.* Despite the fact that Mother has engaged in manipulation to deny Father parenting time, the Court believes that the parties can implement a joint parenting program, if the program is set appropriately to compel Mother's participation in the program in a manner which is consistent with the statutes. The Court believes that it can fashion an appropriate methodology to implement joint custody in this case.

4. *Whether the joint custody is logistically possible.* The Court believes that joint custody is logistically possible. The parties live sufficiently close enough to one another to implement joint custody. Also, the parties can communicate on issues pertaining to the minor children, particularly if that communication is done in a way to ensure that each party has a written record of that communication. Further, the Court believes that there are methodologies that may be imposed that assure compliance with the requirements of joint custody.

Accordingly,

IT IS ORDERED as follows:

- A. The parties are awarded joint legal custody of the minor child, Logan James Lewis (DOB: 8/30/2010).
- B. Each parent is entitled to full and unrestricted access to all medical, dental, prescription and health related records of the child and may secure information from and consult with all health care professionals involved with the minor child. Each party shall keep the other parent informed of the names, addresses and telephone numbers of all health care providers of the child.
- C. Each parent is entitled to full and unrestricted access to all school records, teachers and school officials involved in the child's schooling.

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- D. In the event of any emergency or urgent circumstance involving the child, the other parent shall be notified as soon as is reasonably possible.
- E. Each parent shall have the right to attend and participate in school, extra-curricular, conference, organized activity or other similar event in which parents are routinely invited or permitted to attend.
- F. Each parent shall keep the other apprised of his/her home address, home telephone number, employer and address, work telephone number and, if applicable, cellular telephone number and e-mail address.
- G. It is in the furtherance of the child's best interests for the parents to confer and for the views of each parent to be considered. There shall be communication between the parents to address day-to-day and more significant issues. They shall develop their communication by utilizing e-mail as their primary method for communication. This shall afford a method that ensures both accountability and verifiability. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information. Each should print copies of all e-mails received and sent so that if an issue arises in the future that has been addressed through e-mail, each party shall have proof as to what was communicated.
- H. It is anticipated that parental decisions shall be required for major issues in raising the child and in meeting his on-going needs. If/when they arise, the parents shall address the issues. Each shall give good faith consideration to the views of the other. If the decision involves medical or schooling issues, the parties may further elect to seek input from treating physicians or educators. Both parents shall be provided with such input.
- I. The parties are to communicate, mostly in writing, either through texting or email. The purpose of this requirement is to preserve a record.

Further, the Court believes that it is appropriate to appoint a Parenting Coordinator in this case. The Court appoints the Parenting Coordinator because Mother has shown she will not place the best interests of the child in the forefront on issues when it is appropriate to do so. THE COURT HAS FOUND that Mother has been calculative, unreasonable, and deceptive in her approach to prevent Father from having parenting time with the minor child. Therefore, by separate minute entry, the Court shall appoint a Parenting Coordinator who shall address any parenting issues which cannot be resolved between the parties without intervention. Further, because the Parenting Coordinator is largely necessitated by Mother's actions, THE COURT DETERMINES that it is appropriate for Mother to pay 75% of the cost of the Parenting Coordinator, and for Father to pay 25% of the cost of the Parenting Coordinator. The Parenting

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Coordinator shall be authorized, but not required, to further allocate the fees to reflect the party substantially responsible for causing the issue to be brought before the Parenting Coordinator for resolution.

PARENTING TIME

The Court has reviewed the recommended parenting time by both parties. The Court believes that each parent should be spending a significant amount of time with the minor child, based on the age of the minor child and the need for each parent to bond with the minor child during his young years. The Court is concerned that Father has been denied his opportunity to solidify his bond with the minor child. The Court adopts Father's parenting plan as being appropriate. Therefore, the Court **ORDERS**, as follows:

Week one: Father shall have parenting time with the minor child from Sunday at 8:00 p.m. until Tuesday at 8:00 p.m. Mother shall have parenting time with the minor child from Tuesday at 8:00 p.m. through Thursday at 8:00 p.m. Father shall have parenting time from Thursday at 8:00 p.m. through Sunday at 8:00 p.m.

Week two: Mother shall have parenting time with the minor child from Sunday at 8:00 p.m. until Tuesday at 8:00 p.m. Father shall have parenting time with the minor child from Tuesday at 8:00 p.m. through Thursday at 8:00 p.m. Mother shall have parenting time from Thursday at 8:00 p.m. through Sunday at 8:00 p.m.

The foregoing schedule shall apply to all twelve months of the year.

The parties are free to modify the Court's order with respect to parenting time, **by written mutual agreement**, to accommodate Mother's work schedule. It is not the intent of the Court to adversely impact Mother's work schedule, which the Court understands changes periodically. Further, the Court understands that Mother works a 12-hour shift; however, there has been testimony in this case that Mother controls her own work schedule. That, coupled with the Court's concerns about Mother's actions – denying and limiting Father's parenting time – causes the Court to implement a schedule that, as a default, largely divides the parenting time between the parents. In order to obtain cooperation from Father, Mother must give cooperation. That is the essence of co-parenting.

IT IS FURTHER ORDERED that when the minor child turns two years old, the parties shall have the following parenting time schedule: The parties shall alternate weeks, with Sunday at 6:00 p.m. as the time to effectuate the exchange of the minor child.

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During the summer months, the parties shall have parenting time with the minor child on an alternating two-week basis, each parent having the minor child for two-week periods alternately.

Holidays

For holidays, the parties shall utilize the following schedule which shall take priority over the regular or summer access schedule:

- The child shall be with Mother for Easter Sunday in even-numbered years from 9:00 a.m. until 6:00 p.m. and with Father for this same time period in odd-numbered years.
- Each year, the child shall be with Mother on Mother's Day from 9:00 a.m. until 6:00 p.m. and with Father on Father's Day from 9:00 a.m. until 6:00 p.m.
- Mother shall have the child on such child's birthday in even-numbered years; Father shall have the child on such child's birthday in odd-numbered years.
- July 4th shall begin at 9:00 a.m. and continue until 9:00 a.m. on July 5th. The child shall be with Father in odd-numbered years and with Mother in even-numbered years.
- On three-day weekends involving a Monday holiday (such as Civil Rights Day, Presidents' Day, Memorial Day, Labor Day, etc.) the child will remain in the care of the parent who has the child for the weekend if the parent has the holiday off. The return time will be Monday 6:00 p.m. or as agreed by the parties. If the Holiday falls on a Friday the parties will mutually agree on an early pick-up on Friday morning as agreed by the parties, in no case later than 9:00 a.m.
- Halloween shall be from 4:00 p.m. until 9:00 p.m. when Halloween falls on a school night. Mother shall have the minor child for Halloween on even-numbered years. Father shall have the minor child for Halloween on odd-numbered years.
- Thanksgiving shall be alternated each year. It shall begin at 6:00 p.m. on Wednesday night and continue until the regular exchange time on Friday. Thereafter, the parent entitled to that weekend under the alternating schedule shall have the remainder of the weekend. In even-numbered years, Mother shall be entitled Thanksgiving and Father entitled to Thanksgiving in odd-numbered years.
- Christmas shall be divided into two segments. The first shall begin after school releases for the Christmas break and continue until December 25th at 10:00 a.m. The second segment shall begin on December 25th at 10:00 a.m. and continue until 6:00 p.m. on the night before school commences in January. In each even-numbered year,

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Father shall be entitled to the first segment and Mother shall be entitled to the second segment. In each odd-numbered year Mother shall have the first segment and Father shall have the second segment.

Split School Breaks

Mother and Father shall have parenting time with the minor child for one half of the fall/winter (if different than Christmas) and spring break from school. Mother's parenting time during winter break shall be the first half of winter break in even-numbered years and the second half of winter break in odd-numbered years. Mother's parenting time during spring break shall be the first half of spring break in even-numbered years and the second half of spring break in odd-numbered years. The dividing time shall be Wednesday at 8:00 a.m. on breaks of one week. If the break is two weeks, the dividing time shall be at 8:00 a.m. the second Sunday after school gets out.

Implementation

This schedule shall implement now and, although the child is not school age, will follow the local school schedule.

CHILD SUPPORT

IT IS ORDERED that Mother shall pay to Father as and for child support the sum of **\$251.00** per month, plus **\$5.00** per month as and for the Clearinghouse Handling Fee for a total of **\$256.00**, payable through the Support Payment Clearinghouse on the 1st day of each month, effective as of **April 1, 2011**, by Wage Assignment per the attached instructions.

The Court has determined that under all of the circumstances of this case, no back child support is required because Father did not enjoy parenting time until adjudicated by the Court. The Court, therefore, exercises its discretion and awards no back child support.

LET THE RECORD REFLECT an Order of Assignment is initiated electronically by the above-named deputy clerk.

Until the Wage Assignment becomes effective, it is the responsibility of the party obligated to pay child support to pay the support to **Support Payment Clearinghouse, P. O. Box 52107, Phoenix, AZ 85072-2107**. The payment should show the case number and/or ATLAS case number, the name of the party paying support, and the name of the party who will receive the payment.

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Any change in the paying party's employment and any change in the residential address of either party **must** be submitted to the Clerk's Office, in writing, within 10 days.

UNREIMBURSED MEDICAL EXPENSES

The parties shall divide unreimbursed medical expenses according to their percentage of incomes. THE COURT DETERMINES that the percentage of income is 35% for Father and 65% for Mother. The allocation of unreimbursed medical expenses shall follow that percentage. In order to obtain reimbursement, Mother **must** provide Father with a copy of an invoice of expenditure within 10 days of incurring that expense. Upon receipt of an invoice, Father is obligated to pay his proportional share within 10 days of receipt of the invoice for the expense. The same process shall be applicable if Father is the party who pays the unreimbursed expense.

It is the Court's intent not to create traps for the unwary parent, but to effectuate a manageable and reasonable system so that the parties can be reimbursed for expenses actually incurred. Therefore, the parties must work together to ensure that the other party receives verification of the expenditure, so that the party paying the contributory amount has a basis for reimbursement.

ATTORNEY'S FEES

Both parties seek attorney's fees from the other party. The basis for this request in both instances is an allegation of unreasonable positions by the other party. For the reasons stated herein, and because the Court has found clearly and unequivocally that Mother has prolonged the litigation and has acted unreasonably to deny Father parenting time to which he was otherwise entitled. Therefore,

IT IS ORDERED granting Father's request for an award of attorney's fees and costs.

Counsel for Petitioner is directed to file a *China Doll* Affidavit within 10 days of the receipt of this Order. Counsel for Respondent may submit an opposition to the reasonableness of the fees within 10 days of the date of the affidavit.

THE COURT DETERMINES that Respondent's demand for a paternity test under the circumstances was unreasonable. Therefore,

IT IS FURTHER ORDERED that Father is awarded the cost of the paternity test.

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FILED: Exhibit Worksheet

IT IS FURTHER ORDERED signing this Minute Entry as a formal written order of the Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

/s/ Honorable Thomas L. LeClaire

THOMAS L. LeCLAIRE
SUPERIOR COURT JUDGE

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

Attachments:

AMY J LEWIS: Non IV-D Payment Instructions, Current Employer Information